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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/989,636	11/20/2001	Michael J. Fell	MMD-PT004.1	1159

3624 7590 02/27/2004

VOLPE AND KOENIG, P.C.
UNITED PLAZA, SUITE 1600
30 SOUTH 17TH STREET
PHILADELPHIA, PA 19103

EXAMINER

WUJCIAK, ALFRED J

ART UNIT	PAPER NUMBER
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3632

DATE MAILED: 02/27/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/989,636

Applicant(s)

FELL, MICHAEL J.

Examiner

Alfred J Wujciak III

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11/21/03.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-10,13-16,19-26,31-33 and 36-41 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1,3-10,13,16,19-23,25,31-33 and 36-41 is/are allowed.
- 6) ☒ Claim(s) 14,15,24 and 26 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 November 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 1. 6) ☐ Other: _____

DETAILED ACTION

This is the final Office Action for the serial number 09/989,636, Method and Device for Merchandising a Product, filed on 11/20/01.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 14-15, 26, 31-33, and 36-41 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 14-15 are rejected as depending on cancelled claims 12. The examiner is assuming the applicant intends to have claims 14-15 depending on independent claim 10.

Claim 26 recites the limitation "the shelving element" in line 10. There is insufficient antecedent basis for this limitation in the claim.

Claim 31, lines 7-8, "for and for" is indefinite, there should be only one "for" in one sentence.

Claims 32-33, 36-41 are rejected as depending on rejected claim 31.

Claim Rejections - 35 USC § 102

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The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 26 is rejected under 35 U.S.C. 102(b) as being anticipated by
US Patent # 3,640,389 to Snyder.

Snyder teaches an apparatus (figure 1) comprising a base (44) having a top portion and a lateral side (32). The base comprises a first merchandising element (31) detachably engaged with the lateral side. The base comprises a shelving element (70) disposed above the top of base. The base further comprises a second merchandising element (21) detachably engaged with one of the base and the shelving element. The second merchandising element has a shape (figure 1). The shelving element includes shelves (70), which extend in at least two directions. The second merchandising elements comprise at least a portion (49) extending beyond the shelving element (figure 1). The second merchandising element comprises an illuminated sign (51). The base comprises a product supporting element (41) having a peg board (45).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over Snyder in view of US Patent # 4,751,494 to Crotwell and further view of US Patent # Re. 36,676 to Sourlis.

Snyder teaches an apparatus (figure 1) comprising a base (44) having a top portion and a lateral side (32). The base comprises a first merchandising element (31) detachably engaged with the lateral side. The base comprises a shelving element (70) disposed above the top of base. The base further comprises a second merchandising element (21) detachably engaged with one of the base and the shelving element. The second merchandising element has a shape (figure 1). The shelving element includes shelves (70), which extend in at least two directions. The second merchandising elements comprise at least a portion (49) extending beyond the shelving element (figure 1). The second merchandising element comprises an illuminated sign (51). The base comprises a product supporting element (41) having a peg board (45).

Snyder teaches the illuminated sign having a frame about the perimeter but fails to teach the illuminated sign having at least one major surface with a translucent material. Crotwell teaches the illuminated sign (14) having at least one major surface with a translucent material (column 3, lines 61-62). It would have been obvious for one of ordinary skill in the art at the time the invention was made to have modified Snyder's illuminated sign with the translucent material as taught by Crotwell to gain light accessible to the sign to provide better visibility.

Snyder teaches the base but fails to teach the base having an appearance of masonry element. Sourlis teaches the appearance of the masonry element (10). It would have been obvious for one of ordinary skill in the art at the time the invention was made to have added the

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masonry appearance to Snyder's base as taught by Sourlis to provide an ornament appearance for the apparatus.

Response to Arguments

Applicant's arguments with respect to claims 24 and 26 have been considered but are moot in view of the new ground(s) of rejection.

With respect to applicant's argument on page 14 of the amendment stating that Snyder fails to teach a first merchandising element and a second merchandising element. Snyder teaches the first (31) and second (21) merchandising elements that have support for advertising or displaying products (col.1, lines 5-9).

In the last paragraph of applicant's argument on page 14, the applicant disagrees that Snyder teach a supporting element formed by one of a peg board or a slat wall. On figure 3 of Snyder's invention shows that element 45 has a hole in the board (41), which can be used as a pegboard.

Allowable Subject Matter

Claims 31-33 and 36-41 would be allowable if rewritten or amended to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action.

Claims 1, 3-10, 13, 16, 19-23, and 25 are allowed.

In regard to claims 1, 3-10, 13, 16, 19-23 and 25, the prior art fails to teach the second/flexible merchandising element having a shape corresponding to the product. In regard to claims 31-33, 36-41, the prior art fails to teach a display element disposed on a sidewall of the base that corresponds to a displayed product.

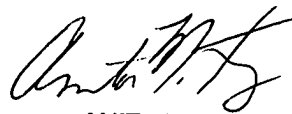
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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alfred Joseph Wujciak III whose telephone number is (703) 306-5994. The examiner can normally be reached on 8am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Leslie A Braun can be reached on 703 308 2156. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Alfred Joseph Wujciak III
Examiner
Art Unit 3632 *ASW*


ANITA KING
PRIMARY EXAMINER

2/17/04